

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pacifica Telestations, LLC)	Facility I.D. No. 51233
Licensee of Station KUAM-TV)	NAL/Acct. No.: 201541420036
Hagatna, Guam)	FRN: 0022452825

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 23, 2015

Released: December 23, 2015

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ we find that Pacifica Telestations, LLC (the “Licensee”), licensee of Station KUAM-TV, Hagatna, Guam (the “Station”), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules² by failing to file with the Commission in a timely manner Children’s Television Programming Reports (FCC Form 398) for five quarters, Section 73.3526(e)(11)(i) of Rules³ by failing to place in its public file quarterly issues/programs lists for fifteen quarters, and Section 73.3514(a) of the Rules by failing to report certain violations in the renewal application. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of sixteen thousand dollars (\$16,000). We also find that the Licensee apparently willfully and/or repeatedly violated Section 73.3526(b)(2) of the Rules⁴ by failing to upload (i.e. file) in the Station’s electronic public file (“e-pif”) copies of its quarterly TV issues/programs lists that were in the Station’s physical public file prior to August 2, 2012. We hereby admonish the Licensee for this violation of the Commission’s rules.

II. BACKGROUND

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.⁵ As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² 47 C.F.R. § 73.3526(e)(11)(iii).

³ 47 C.F.R. § 73.3526(e)(11)(i).

⁴ 47 C.F.R. § 73.3526(b)(2).

⁵ 47 C.F.R. § 73.3526.

quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. That subsection also requires licensees to file reports with the Commission and place them in their public file by the tenth day of the succeeding calendar quarter, and to publicize the existence and location of the reports.⁶

3. Section 73.3526(e)(11)(i) of the Commission's rules requires every commercial television licensee to place in its public file, on a quarterly basis, a TV issues/programs list which details programs that have provided the station's most significant treatment of community issues during the preceding three month period and must include a brief narrative of the issue addressed, the time, date, duration, and title of each program in which the issue was treated. TV issues/programs lists must be placed in the Station's public file by the tenth day of the succeeding calendar quarter and copies must be retained until final action on the station's next license renewal application.⁷

4. In 2012 the Commission adopted Section 73.3526(b) of the Rules, which requires licensees to upload elements of stations' public files to an on-line Commission hosted website (*i.e.*, a Station's "e-pif"). This requirement includes uploading copies of a station's quarterly TV issues/programs lists to its e-pif.⁸ Broadcasters' e-pif requirements were phased in between August 2012 and February 2013. Beginning August 2, 2012, stations were required to post any document that would otherwise be placed in a station's public file, with limited exception, to their e-pif on a moving forward basis. By February 4, 2013, stations were required to upload to their e-pif those public file documents, with limited exceptions, that were already in their physical public file prior to August 2, 2012.⁹

5. Section 73.3514(a) of the Rules provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed. . . ." Section IV, Question 3 of the Form 303-S license renewal application requires licensees to certify "that the documentation, required by 47 C.F.R. Section 73.3526 . . . has been placed in the station's public inspection file at the appropriate times." Section IV, Question 6 of the license renewal application requires licensees to certify that it has filed with the Commission its Children's Television Programming Reports according to the requirements of Section 73.3526 of the Commission's rules and requires the Licensee to submit a statement of explanation as an exhibit if the Licensee has failed to do so.

6. On September 29, 2014, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.¹⁰ The Licensee did not report, as required, that it failed to file five Children's Television

⁶ 47 C.F.R. § 73.3526(e)(11)(iii).

⁷ *Id.*

⁸ 47 C.F.R. § 73.3526(b)(2); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report*, Second Report and Order, 27 FCC Rcd 4535 (2012) ("*Second Report and Order*") (requiring broadcast television stations to post their public inspection files, with limited exception, to an online Commission-hosted database).

⁹ See *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012)(announcing effective date of electronic public file rule); *Television Broadcast Stations Reminded of Their Online Public Inspection File Obligations*, Public Notice, 27 FCC Rcd 15315 (2012) (reminding stations to upload copies of existing public file documents to their electronic public file); *Television Broadcast Stations Reminded of the Upcoming Public Inspection Filing Deadline*, Public Notice, 28 FCC Rcd 429 (2013)(providing a final reminder to broadcasters to upload copies of existing public file documents to their electronic public file); see also Second Report and Order, 27 FCC Rcd at 4580, para. 97 (establishing compliance periods for complying with broadcasters new electronic public file requirement).

¹⁰ File No. BRC DT - 20140929AFC ("KUAM Renewal Application").

Programming Reports in a timely manner.¹¹ Additionally, Staff inspection of the Station's e-pif revealed that the Licensee did not upload to its e-pif copies of its quarterly TV issues/programs lists that were in the Station's physical public file prior to August 2, 2012 until July 30, 2015, after Commission staff called station counsel to request that the documents be uploaded. In an amendment dated August 2015,¹² Licensee explained that the absence of the missing quarterly TV issues/programs lists from the Station's e-pif was intentional as the Licensee believed that the lists were not required to be uploaded to its e-pif because the Commission had approved a long form transfer of control (FCC Form 315)¹³ of the Station followed by a pro forma license assignment (FCC Form 316).¹⁴ The Licensee further disclosed that in the course of preparing the missing quarterly TV issues/programs lists to upload to its e-pif, it discovered that hard copies of 15 quarters¹⁵ were missing from the local public inspection file. The licensee assures, however, that "because of the diligence with which KUAM-TV maintained its running log for issues-programs lists, if it had received a request during the missing quarters identified, the station would have been able to honor the concerned citizen's request despite the misfiling."¹⁶

III. DISCUSSION

7. The Licensee's failure to timely file electronically the Station's Children's Television Programming Reports for five quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii). Licensee's failure to report this violation in its license renewal application constitutes an apparent violation of Section 73.3514(a) of the Rules.¹⁷ Furthermore, Licensee's failure, to timely place hard copies of its quarterly TV issues/programs lists in the Station's physical public file prior to August 2, 2012¹⁸ for 15 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(i) of the Rules.¹⁹ Licensee's failure to upload in a timely manner to the Station's e-pif copies of the Station's TV issue/programs lists that were in the Station's physical public file prior to August 2, 2012 constitutes an apparent willful and/or repeated violation of Section 73.3526(b)(2).²⁰ While all of the required TV issues/programs lists have now been recreated and uploaded to the Station's e-pif, the violations are not excused.²¹

8. Furthermore, The Video Division has consistently followed Commission precedent holding

¹¹ Licensee filed the following quarterly Children's Television Programming Reports late: Quarters 3 and 4 of 2012, Quarter 3 of 2014, and Quarters 1 and 2 of 2014.

¹² KUAM Renewal Application at Attachment 20, "Statement re Local Public File."

¹³ File No. BTCCDT-20130131AAL (granted Dec. 27, 2012).

¹⁴ File No. BALCDT-20130131AAX (granted Feb. 3, 2013).

¹⁵ These quarters are: Quarters 3 and 4 of 2007; Quarters 1, 2, 3, and 4 of 2008; Quarters 1, 2, 3, and 4 of 2009; Quarters 1, 2, and 3 of 2010, and Quarters 1 and 2 of 2012.

¹⁶ KUAM Renewal Application at Attachment 20, "Statement re Local Public File."

¹⁷ 47 C.F.R. § 73.3514.

¹⁸ Licensees were required to place hard copies of their quarterly TV issues/ program lists in their local public inspection file prior to August 2, 2012.¹⁸ Broadcasters' e-pif requirements were phased in between August 2012 and February 2013. *Supra* n. 9.

¹⁹ 47 C.F.R. § 73.3526(e)(11)(i).

²⁰ 47 C.F.R. § 73.3526(b)(2).

²¹ See *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969) (Permitting mitigation as an excuse based upon corrective action following a violation would "tend to encourage remedial rather than preventive action.").

that “[t]ransfer of control of the licensee’s stock subsequent to a violation does *not* excuse the licensee for the violation.”²² Thus, there is no basis by which the intra-family transfer of control of the stock of the Licensee corporation²³ should excuse the violations identified. Additionally, a pro forma assignment (FCC Form 316) following a long form transfer of control (FCC Form 315) does not relieve liability for violations during the license term.²⁴

9. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁵ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.²⁶ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,²⁷ and the Commission has so interpreted the term in the Section 503(b) context.²⁸ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”²⁹

10. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form and a base forfeiture amount of \$10,000 for public file violations.³⁰ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”³¹

11. Based on our review of the facts and circumstances, we find that a forfeiture in the amount of

²² *EZ Sacramento, Inc.*, Forfeiture Order, 14 FCC Rcd 13539, 13540 (MMB 1999) (emphasis added) (citing *Winslow Communications, Inc.*, Memorandum Opinion and Order, 45 FCC 2d 662, 663 (1972) (“The transfer of control of stock of the corporation subsequent to the violations does not excuse the licensee of the violations.”)); *Mapleton Licensee of San Luis Obispo*, Forfeiture Order, 27 FCC Rcd 4099, 4101 n. 19 (EB 2012); *Hensley Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 115, 116 n. 9 (EB 2009).

²³ File No. BALCDT - 20130131AAX (granted December 27, 2012).

²⁴ See *P.D. Communications, LLC*, 20 FCC Rcd 16557 (MB 2005).

²⁵ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

²⁶ 47 U.S.C. § 312(f)(1).

²⁷ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁸ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

²⁹ 47 U.S.C. § 312(f)(2).

³⁰ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

³¹ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4) and note to paragraph (b)(4), Section II. Our action today addresses apparent violations from the date the prior license renewal application was granted through the adoption date of this item. Any violations that may occur following the adoption date of this item and prior to the grant of the current license renewal application would be separate violations and potentially subject to additional Commission action.

\$3,000 for failing to file its Children's Television Programming Reports in a timely manner for five (5) quarters is appropriate. The Licensee also did not timely file the quarterly TV issues/programs lists for the Station for fifteen (15) quarters, and we conclude that the Licensee is apparently liable for a \$10,000 forfeiture for this public file violation. The Licensee further failed to report certain violations in its renewal application and, we therefore conclude that the Licensee is liable for a \$3,000 forfeiture for this violation. We also find that an admonition is appropriate for the Licensee's willful and/or repeated violation of Section 73.3526(b)(2) of the Rules for failing to upload to the Station's e-pif in a timely manner copies of the Station's TV issues/programs Reports that were previously located in the Station's physical public file. Accordingly, the Licensee is liable for a total forfeiture in the amount of \$16,000 for its apparent willful and/or repeated violations of Sections 73.3526(e)(11)(i), 73.3526(e)(11)(iii), and 73.3514(a) of the Rules.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Pacifica Telestations, LLC, licensee of Station KUAM-TV, Hagatna, Guam, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of sixteen thousand dollars (\$16,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i), 73.3526(e)(11)(iii), and 73.3514(a) of the Commission's Rules.

13. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's Rules, that within thirty (30) days of the release date of this *NAL*, Pacifica Telestations, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payments of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. Electronic notification of payments should also be sent to Adrienne Denysyk at adrienne.denysyk@fcc.gov on the date payments are made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code).³³

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment.

³² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³³ Questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at ARINQUIRIES@fcc.gov.

The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

15. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Adrienne Denysyk, Attorney Advisor, Video Division, Media Bureau, Room 2-A820, and **MUST INCLUDE** the NAL/Acct. No. referenced above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.³⁴

17. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁵

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Pacifica Telestations, LLC , 600 North Harmon Loop Road, Suite 102, Dededo, GU 96912, and to its counsel, John Wells, King, Esq., Law Offices of John Wells King, 4051 Shoal Creek Lane East, Jacksonville, FL 32225-4793.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁴ See *San Jose State Univ.*, 26 F.C.C. Rcd 5908 (2011) (noting that “[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee’s ability to pay. Other financial indicators may be considered....”).

³⁵ See 47 C.F.R. § 1.1914.